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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

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8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 v.

11 ALFONSO RIVERA-AVALOS, et al.,

12 Defendants.
13

2:09-CR-262 JCM (GWF)

14 **ORDER**

15 Presently before the court is the matter of *United States v. Rivera-Avalos, et al*, case no. 2:09-
16 cr-262-JCM-GWF.

17 The government has filed the instant motion requesting that the hearing currently scheduled
18 for September 16, 2014, be vacated. (Doc. # 340). This hearing was scheduled upon mandate from
19 the Ninth Circuit which directed that the court hold an evidentiary hearing regarding the timeliness
20 of defendant Fuentes-Garcia's 28 U.S.C. § 2255 petition. The government now disclaims its
21 argument that the petition was untimely, and instead wishes to respond to the petition on its merits.
22 The government represents that the motion is unopposed.

23 In light of the government's concession that it has no factual basis for contesting the
24 defendant's timeliness argument, an evidentiary hearing on the issue is unnecessary. Within ten (10)
25 days of the issuance of this order, the government shall file its motion seeking to waive the attorney-
26 client privilege, have defendants' counsel provide an appropriate affidavit, and respond to the
27 petition, as indicated in its motion. (Doc. # 340, p. 3, fn. 1).
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Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the government's motion to vacate (doc. # 340) be, and the same hereby is, GRANTED.

IT IS FURTHER ORDERED that the evidentiary hearing currently scheduled for September 16, 2014, is hereby VACATED.

DATED August 1, 2014.


UNITED STATES DISTRICT JUDGE